IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.952 OF 2003

WITH

CIVIL APPLICATION NO.1376 OF 2003

1.Mohd.Salim Abdul Salam,
aged 45 years, Mumbai,
Indian Inhabitant.

2.Mohd.Aslam Abdul Salam,
aged 45 years, Mumbai,
Indian Inhabitant.

3.Mohd.Nazir Abdul Salam,
aged 43 years, Mumbai,
Indian Inhabitant.

4.Abdul Rauf Abdul Salam,
aged 35 years, Mumbai,
Indian Inhabitant.

5.Mohd.Akhtar Abdul Salam,
aged 28 years, Mumbai,
Indian Inhabitant.

6.Smt.Firdose w/o.Mohd.Mehtab,
aged 40 years, Mumbai,
Indian Inhabitant.
No.1 to 6 R/o."Mammu Chawl",
Room No.22, Quresh Nagar,
Kurla (East), Mumbai - 400 070.

7.Surya W/o.Mohd.Aslam,
aged 47 years, U.P.Inhabitant,
Ismail Asam Nagar, Bans Mandi,
Bareilly (U.P.)

8.Smt.Naseem W/o.Abdul Aziz,
aged 40 years, Mumbai,
Indian Inhabitant,
Quresh Nagar, Kurla,
Mumbai - 400 070.

9.Smt.Nasrin W/o.Mohd.Hasim,
aged 33 years, Mumbai,
Indian Inhabitant,
Marjban Mansion, 1st Floor,
Room No.8, Byculla, New Market,
Mumbai - 400 027.

10.Smt.Qamar Afroz Abdul Salam,
aged 32 years, Mumbai,
Indian Inhabitant, "Mammu Chawl",
Room No.22, Quresh Nagar,
Kurla (East), Mumbai - 400 070.

(All heirs & legal representatives
of deceased Abdul Salam and ...Appellants
Smt.Akhtari Begum) (Ori.Plaintiffs)

Versus

1.Smt.Sabiha Maqsood Khan,
Mumbai Indian Inhabitant,
Aged 42 years, R/at 46,
"Mould Building", 2nd Floor,
Room No.43, Quresh Nagar,
Kurla (East), Mumbai-400 070.

2.Smt.Mehmooda Asraf Khan,
Adult Inhabitant of U.P.
38, Cantonment Road,
Quarters 5 & 6, Phool Baug,
Lucknow (U.P.)

3.Smt.Washiha Muqtar Khan,
Adult, Inhabitant of Dist.Thane,
Residing at "Sakina Manzil",
Kausa Mumbra, Dist.Thane.

4.Smt.Khusnudi Begum,
W/o.Mohd.Wali, Mumbai,
Indian Inhabitant, Aged 69 Yrs.,
"Fakir Mohd.Nazruddin Chawl",
Chawl No.95, Quresh Nagar,
Kurla (East), Mumbai - 400 070.

(All heirs and legal representatives ...Respondents
of the deceased Mohd.Hussein Khan) (Ori.Defendants)

.....

Mr.Rahul P.Walvekar i/b Mr.D.S.Sawant for Appellants.

Mr.R.D.Mishra for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JANUARY 12, 2007.

ORAL ORDER :

1. This Appeal from Order takes exception to the Judgment and Order passed by the Bombay City Civil Court, Greater Bombay dated 10th November 2003 in S.C.Suit No.6167 of 2001. By this decision, the Trial Curt has held that the Suit is not properly valued. It has further held that if the Suit was to be properly valued having regard to the prayers contained in the Plaint, the valuation would far exceed amount of Rs.50,000/- (Rupees Fifty Thousand), for which reason, the City Civil Court will have no jurisdiction to try and entertain the Suit. Having said so, the Trial Court by the same order directed the Registrar to return the plaint to the Plaintiffs, so that the

same can be presented before the Court of competent jurisdiction. To consider the correctness of the view taken by the Trial Court, we shall straight away advert to the reliefs claimed by the Plaintiffs in the Suit. The same reads thus :

> "(a) It may be declared by this Hon'ble Court that the Agreement for Assignment, dated 16.11.1977, Ex."F" hereto, purported to have been signed or executed by late Smt.Akhtari Begum is void and illegal documents, and vitiated by forgery and fabrication, not enforceable, invalid and of no legal effect, and not binding upon the Plaintiffs;
>
> (b) It may be declared by this Hon.Court that the Affidavit dtd.19.4.1982, Ex."G" hereto, purported to have been signed or executed by late Smt.Akhtari Begum, is void and illegal document, vitiated by forgery and fabrication, not enforceable, invalid and of no legal effect and not binding upon the Plaintiffs and order it to be cancelled and delivered up to the Plaintiffs;
>
> (c) It may be declared by this Hon.Court that the Affidavit dtd.19.4.1991, Ex.J. hereto, purported to have been signed or executed by late Shri Abdul Salam Haji Abdullah, is void and illegal document, vitiated by forgery and fabrication, not enforceable, in valid and of no legal effect and not binding upon the Plaintiffs and order it to be cancelled and delivered up to the Plaintiffs;
>
> (d) It may be declared by this Hon.Court that late Shri Mohamed Wali Mohamed Husein Khan was never the assignee, transferee or

the owner of the suit premises, being the two chawls known as "Akhtari Begum Chawl", assessed under Ward No.L-743a(7)46/P, 743(1-A)/46-PA, situated at Kasaiwada, Cemetery Road, Qureshi Nagar, Kurla (East), Mumbai 400 070.

(e) It may further be declared by this Hon' Court that the Defendants being the heirs of late Shri Mohamed Wali Mohamed Hussein Khan, and each of them, have no right, title or interest of whatsoever nature in the Suit Premises, being two Chawls known as "AKHTARI BEGUM CHAWL", assessed under Ward No.L-743(7)46/P and 743(11-A) 46/PA situated at "Kasauwada" Cemetry Road, Qureshi Nagar, Kurla (East), Mumbai 400 070, either as Owner thereof, or otherwise;

(f) --- deleted as per order dt.2.8.03 Sd/11.8.03;

(g) That pending the hearing and final disposal of the suit, a Court Receiver, High Court, Bombay, be appointed as the Receiver of the suit premises, being two Chawls, known as "Akhtari Begum Chawl" bearing House No.46/P and 46/PA respectively (previously known as Sayyed Hassan Sayyad Mohd.Chawl) situated at Survey No.275, Hissa No.4, Qureshi Nagar, Kasaiwada, Cemetry Road, KURLA (EAST), Mumbai 400 070, and assessed by the B.M.C. under Ward No.L-743(7) 46/p and L-743(11-A) 46/pA respectively, with all powers under order 40, Rule 1, of the Civil Procedure Code, as amended upto date;

(h) That the Defendants by themselves, their servants, agents, hirelings, family members and all persons claiming through and under them be restrained by a permanent order and injunction of this Hon' Court from using and/or even enforcing their supposed rights under the alleged Agreement for Assignment dated

16.11.1977, Ex.F hereto, Affidavit dated 19.4.1982 Ex.G hereto and Affidavit dated 15.4.1991, Ex.J. hereto and or acting in any manner whatsoever on the basis of the said three Exhibits against the Plaintiffs in respect of the suit premises and/or declaring themselves as Owners or Assignees or Leases of the Suit premises and/or dispossessing the Plaintiffs and/or from taking over forcible possession of the suit premises or any portion thereof in any manner whatsoever and/or causing disturbance or obstruction to the Plaintiffs in collecting the rents from the tenants in the suit premises and/or from collecting the rents from the tenants of the Suit premises and/or from transferring the Rent Receipts from the names of the old tenants to the name/s of any other person, and/or dealing with, disposing off, alienating or encumbering the suit premises in any manner whatsoever, i.e. Akhtari Begum Chawl, bearing House No.46/P and 46/PA respectively (previously known as Sayyed Hasan Sayyed Mohd.Chawl) situated at Survey No.275, Hissa No.4, Qureshi Nagar, Cemetry Road, Kurla (East), Mumbai 400 070 and assessed by the B.M.C. under Ward No.L-743(7) 46/p and L-743(11-a) 46/PA respectively;

(i) Pending the hearing and final disposal of the suit, the Defendants by themselves, their servants, agents, hirelings, family members and all persons claiming through and under them, be restrained by a Temporary Order and Injunctions, in terms of prayers (g) and (h) hereinabove;

(j) Ad-interim as well as interim Injunction be also granted, in terms of prayer (i) hereinabove;

(k) Cost of the suit;

(l) Such and further reliefs may also be granted which this Hon.Court may deem fit

and proper to grant."

2. The Trial Court has rightly noted that having regard to the prayer clause (a) and prayer clause (d), by no stretch of imagination, the valuation of the Suit can be said to be less than Rs.50,000/- (Rupees Fifty Thousand). This is so because the locality in which the suit property is situated and its dimensions, it can be safely held that the valuation of the suit property was more than Rs.50,000/- (Rupees Fifty Thousand) as of November 2001, that is the date of the filing of the Suit. Besides, the Trial Court has found that the Plaintiffs were relying on Agreement executed in 1977 in relation to the Suit property which itself discloses the value of the property as Rs.37,000/- (Rupees Thirty-seven Thousand). Considering the inflation rate and the increase in the value of the property since 1977, the value thereof as on 2001, by no standards, would be less than Rs.50,000/- (Rupees Fifty Thousand). This approach of the Trial Court is the correct approach and warrants no interference.

3. To get over this position, Counsel for the Appellants would rely on Section 8 of the Bombay Court Fees Act, 1959 to contend that the Court could have revised the valuation and determined the correct valuation of the Suit only after holding some enquiry. The argument though attractive, overlooks that the assumption drawn by the Trial Court is a reasonable assumption and judicial notice of escalation of property since 1977 in the locality in question ought to be taken by the Court. The valuation of the property in 1977 was Rs.30,000/- (Rupees Thirty Thousand). Obviously, in the year 2001, the property would not be less than Rs.50,000/- (Rupees Fifty Thousand), as has been rightly inferred by the Trial Court. Counsel for the Appellants would then rely on the decision of this Court reported in **2006(5) Mh.L.J. 528 in the case of Sai Samrat Security Service and Ors. v. Rizvi Builders & Ors**. This decision is of no avail to the Appellants. In that case, the relief claimed in the Plaint was simplicitor injunction. In the present case, however, the relief is one of declaration and injunction. For such a relief, valuation of the property would be relevant which

has been rightly reckoned by the Trial Court. Hence, there is no substance in this Appeal. The same is dismissed.

4. The Appellants are granted two weeks time to present the Plaint before the Competent Court after the same is returned to the Appellants.

5. In view of the above order, companion Civil Application stands disposed of.

A.M.KHANWILKAR, J.